



SAMPLE DEMAND LETTER

3/29/04 ver.

VIA FEDERAL EXPRESS **NEXT DAY DELIVERY**

[Date]

[PRP Name]

[Address]

[City, State, Zip Code]

Re: Demand for Reimbursement of Costs Expended at [Site Name] in [Site Location]

Dear [PRP Name]:

[If the PRP has already been notified of its potential liability, insert the following paragraph 1:] The United States Environmental Protection Agency ("EPA") previously contacted [you or company name] regarding activities connected with the [site name] Site ("the Site") located in [city, state]. A copy of EPA's past correspondence is attached for your reference. In our letter dated [insert date], EPA informed [you or company name] and the other potentially responsible parties ("PRPs") at this Site that you may be liable for money expended by EPA for response action at this Site under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), commonly known as the federal Superfund law.] *[If appropriate, insert: "At that time, EPA also offered you and other PRPs the opportunity to take voluntary action necessary to abate any releases or threats of release of hazardous substances from the Site or to reimburse EPA for response actions taken.]* *[If appropriate, insert: "In addition, EPA provided you with an opportunity to communicate and document your financial concerns if you believed you were unable to [pay the amount necessary to settle with] [undertake the cleanup action requested by] EPA."]* *[For non-settlers or UAO non-compliers, insert if appropriate: "Because you did not undertake the necessary actions, EPA expended funds under the authority of CERCLA to clean up the Site."]*

[If the PRP has not already been notified of the grounds for its liability, insert the following alternative paragraph 1:] Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"), the U.S. Environmental Protection Agency ("EPA") is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a release has occurred at the [insert site name] Site ("the Site") located in [city, state]. EPA has spent, or is considering

spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that [you or company name] may be a potentially responsible party (“PRP”) under CERCLA for cleanup of the Site or for costs EPA has incurred in cleaning up the Site.

Explanation of Potential Liability

Under Section 107(a) of CERCLA, PRPs may be held liable for all costs incurred by the EPA (including interest) in responding to any release or threatened release of hazardous substances at the Site, unless the PRP can show divisibility or any of the other statutory defenses.

PRPs include current and former owners and operators of the Site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the Site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

Based on the information collected, EPA believes that [you or company name] may be liable under Section 107(a) of CERCLA with respect to the [insert site name] Site, as [a/an] *[select from the following:]* (1) arranger, who by contract or agreement, arranged for the disposal, treatment or transportation of hazardous substances at the Site; (2) current or previous owner and/or operator of the Site; (3) transporter, who by contract or agreement, accepted hazardous substances for transportation and disposal at, and selected, the Site. *[Additional information as to the nature of the PRP’s liability may be added. For example, if TCE is the contaminant of concern at the Site: “Specifically, EPA has reason to believe that [you or company name] [contributed TCE to the Site as an [owner/operator, transporter]] OR [arranged for the disposal, treatment or transportation of TCE to the Site.”]*

To date, EPA [and the State/Commonwealth of _____] [has/have] taken [several] response action[s] at the Site under the authority of the Superfund Program. Below is a brief description of the actions taken at the Site. *[Insert brief description, including dates of Site activities such as:]*

- A Preliminary Assessment (“PA”) and Site Investigation (“SI”) in order to gain a basic understanding of any risks posed to human health and the environment by releases or threatened releases from the Site.
- A Removal Action, conducted to reduce any immediate threat to the environment or human health.
- A Remedial Investigation (“RI”) to identify the Site characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the Site and the risks posed by the Site.
- A Feasibility Study (“FS”) to evaluate different cleanup options for the Site.
- Remedial Design and Remedial Action (“RD/RA”) to design and implement the

EPA approved cleanup action for the Site.

Activities to monitor, operate and maintain the cleanup action after the cleanup is completed.

Demand for Reimbursement of Costs

In accordance with Section 104 of CERCLA, EPA has already taken certain response actions, which are listed above, and incurred certain costs in response to conditions at the Site. EPA is seeking to recover from [you or company name] and other PRPs at the Site its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. To date, the approximate total response costs identified through [date of most recent cost report] for the Site are \$ _____. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from you and other PRPs for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed as Attachment ____.

[Insert the following paragraph unless it has already been determined that the PRP does not have an inability to pay EPA's costs:] While this letter demands that [you or company name] reimburse EPA for all funds spent [or to be spent] at the Site, EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe, and can document, that you fall within this category, please contact [name of attorney/RPM/enforcement specialist] at [address/phone number] for information on "Ability to Pay Settlements." In response, you will receive a package of information about such settlements and a form to fill out with information about your finances, and you will be asked to submit financial records including business [and personal] federal tax returns. If EPA concludes that [you or company name] [has/have] a legitimate inability to pay the full amount, EPA may offer a schedule for payment over time or a reduction in the total amount demanded from you.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to [you or company name]. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of [your or your company's] first contact with the [insert Site name], up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

Please send a written response to this cost recovery demand, within thirty (30) days, to:

[Insert names and addresses of appropriate EPA personnel]

If a response from you is not received within thirty (30) days, EPA will assume that you have declined to reimburse the Superfund for the Site expenditures, and pursuant to CERCLA, EPA may pursue civil litigation.

Also, please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy. EPA reserves the right to file a proof of claim or an application for reimbursement of administrative expenses.

Resources and Information for Small Businesses

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

In addition, if you are a “service station dealer” who accepts used oil for recycling, you may qualify for an exemption from liability under Section 114(c) of CERCLA. EPA guidance regarding this exemption can be found on the Internet at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>. If you believe you may qualify for the exemption, please contact [name and phone number of attorney/RPM/enforcement specialist] to request an application/information request specifically designed for service station dealers.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at www.epa.gov. In addition, the EPA Small Business Ombudsman may be contacted at www.epa.gov/sbo. Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act (“SBREFA”), which is enclosed with this letter.

Please give these matters your immediate attention and consider consulting with an attorney. If you have any questions regarding this letter, please contact [name and phone number of regional contact]. Thank you for your prompt attention to this matter.

Sincerely,

[Name/Title/Address of Individual Delegated
Signature Authority]

Enclosures

cc: